

UNITED STATES DISTRICT COURT

for the
District of New Mexico

FILED

United States District Court
Albuquerque, New MexicoMitchell R. Elfers
Clerk of CourtIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)
The person of Kendale Johnson

Case No. MR 22-1002

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See attachment A

located in the _____ District of _____ New Mexico _____, there is now concealed (identify the person or describe the property to be seized):

See attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
18 U.S.C. §§ 1153 and 2111 Robbery

Offense Description

The application is based on these facts:

See attached affidavit

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Andrew Fulp, Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
telephone and submitted via e-mail (specify reliable electronic means).

Date: June 28, 2022

Judge's signature

City and state: Albuquerque, New Mexico

B. Paul Briones, United States Magistrate Judge

Printed name and title

ELECTRONICALLY SUBMITTED AFFIDAVIT

Your affiant, Andrew Fulp, a Special Agent (SA) with the Federal Bureau of Investigation (FBI), states under oath as follows:

Introduction and Agent Background

1. Your affiant is a Special Agent (SA) of the Federal Bureau of Investigation (FBI), and is currently assigned to the Gallup, New Mexico, Resident Agency of the Phoenix, Arizona, FBI Field Division. In the course of my official duties, I am charged with the investigation of crimes occurring on (among other places) the Navajo Indian Reservation within the District of Arizona. My training and experience include investigating violations of Federal Law, including violations of Title 18 of the United States Code.

2. The statements contained in this Affidavit are based in part on information provided to your affiant, by other Special Agents and law enforcement officers, either directly or indirectly through their reports or affidavits, and information provided by witnesses. Your affiant also relies on his experience, training, and background as a Special Agent with the FBI in evaluating this information, and on your affiant's own work on this case.

3. As further described in Attachments A and B, I am requesting that the Court issue a search warrant to search for evidence in the form of deoxyribonucleic acid (DNA), located in and on the body of Kendale Johnson (Johnson), date of birth XX-XX-89, social security number XXX-XX-2890. This request is made in support of an investigation for the violation of Title 18, United States Code, Sections 1153 and 2111 (robbery), among other

violations. I submit this affidavit in support of an application for a search warrant, pursuant to Rule 41, Federal Rules of Criminal Procedure. Because this affidavit is being submitted for purposes of establishing probable cause for a search warrant, it does not contain every fact known to law enforcement concerning this investigation.

4. Johnson is an Indian male and enrolled member of the Navajo Nation Indian Tribe, and the crimes alleged in this Affidavit occurred within the confines of the Navajo Nation Indian Reservation in the District of Arizona.

Carjacking/Robbery on July 5, 2021

5. On July 6, 2021, your affiant was contacted by Navajo Nation Police Department (NNPD) Criminal Investigator (CI) Jerrick Curley regarding a robbery investigation. CI Curley had been contacted by NNPD Officers after they responded to a call in Teec Nos Pos, Arizona, which is located on the Navajo Nation.

6. Responding officers told CI Curley they had received a call during the evening hours of July 5, 2021. Three unidentified subjects had attempted to kidnap a woman, C.C., from her residence. After the suspects were unsuccessful, they assaulted C.C. and stole her vehicle, a 2007 Chevrolet Silverado truck. The unidentified subjects then left the area prior to responding officers arriving on scene.

7. EMT personnel arrived on scene and transported C.C. to a local hospital for treatment.

Recovery of the vehicle

8. On July 10, 2021, C.C.'s stolen vehicle was recovered abandoned near mile post 87 off of US Highway 491 in Shiprock, New Mexico, and towed to the FBI Farmington

Office where it was secured. On July 14, 2021, CI Curley and your affiant processed the vehicle, and recovered several items of evidence, including a cigarette butt in the driver's door pocket.

9. The cigarette butt was sent to the FBI laboratory in Quantico, Virginia and analyzed. Upon processing, the laboratory was able to locate a DNA profile from the cigarette butt. A routine search of the Combined DNA Index System (CODIS) database indicated a possible DNA association between the cigarette butt and the DNA profile for Johnson. The lab requires a known DNA sample from Johnson to confirm this association.

Interview of C.C.

10. On July 14, 2021, CI Curley and your affiant interviewed the victim. C.C. said the incident started around 10:00PM when she heard the chime of her gate sensor, indicating someone was entering her property. Shortly after, a young female exited a vehicle and asked if "MJ" was home.

11. MJ is the daughter of C.C. MJ had a prior relationship with Johnson. Six years ago, MJ and Johnson dated for a duration of about three months. After their relationship ended, Johnson went to prison for five years. MJ had not seen Johnson since his release from prison.

12. When the female suspect asked about MJ being at home, C.C. was standing in her doorway, and replied that MJ was not at home. The vehicle then drove off. Several minutes later, C.C. heard the gate sensor chime again, and the same vehicle returning. The same female said she had a note to give to MJ, and C.C. began walking towards the female.

13. Once C.C. was near the female, a male began rushing towards C.C. and grabbed her wrist. The male then told C.C. to get into the vehicle, and C.C. saw that he had a gun. C.C. began screaming, and then saw another male suspect. C.C. was then slammed to the ground, where she hit her head and blacked out briefly. Both males then helped her up, and she told them to take it easy on her.

14. The suspects then told C.C. to get into the vehicle, but she refused and began screaming again. She was then struck in the head with the gun and she felt blood coming down her face. The female suspect told the male suspects to take C.C.'s smart watch because she might use it to make a call. A male suspect then took the watch from C.C. and handed it to the female suspect.

15. One of the male suspects took a rag and stuffed it into C.C.'s mouth and told her not to scream again or they would shoot her leg. One of the male suspects then went inside her residence. At some point, her wrists were tied together, and some type of strap was wrapped around her mouth. C.C. kept trying to escape but was unable to. Eventually she heard a gunshot.

16. One of the male suspects asked C.C. where the truck keys were, and she told them the keys were inside the house. The male suspect could not find the truck keys, so he kicked C.C. in the ribs. Then C.C. said the keys were in the truck, at which point the male suspect kicked her in the ribs again and went to her truck. C.C. heard her truck turn on, and then saw the suspects driving away. C.C. could see the driver was one of the male suspects, and he yelled to C.C. "tell MJ we're back".

17. C.C. was able to break free of her restraints and run inside her residence to get help. Eventually the police and an ambulance arrived.

18. C.C. did not smoke and did not leave any trash inside her vehicle the day it was stolen.

Carjacking/Robbery on May 16, 2021

19. On May 16, 2021, J.W. was traveling in his vehicle near Red Mesa, AZ. At some point, he became tired of driving so he pulled off on the side of the road to rest. At about 7:30AM, he was awoken by two (2) males outside of his vehicle. One of the males had two (2) handguns and the other had one (1). J.W. described both males as Native Americans, one of which was between 25 and 35 years old, and another that was between 18 and 22 years old. J.W. recalled a black truck parked in front of his vehicle during the incident. There was a third person in the vehicle, but J.W. could not tell if it was a male or a female.

20. J.W. was ordered from his vehicle and soon ordered onto his knees about ten (10) yards from his car. One of the males began asking for J.W.'s property including his wallet, keys, and cell phone, all of which J.W. provided. The male also asked him for his PIN to his bank cards, which J.W. provided. The males began to rummage through J.W.'s vehicle and found a can of bear pepper spray. One of the males asked J.W. if he wanted to get shot. At that time, J.W. thought that he was going to be shot. Instead, one of the males used the recently discovered bear pepper spray and sprayed J.W. in his face. J.W. was gasping for air and struggling to breathe.

21. One or both of the males got into J.W.'s vehicle and threw him some boots, clothes, and a water bottle and left with his vehicle. J.W.'s vehicle was a silver Subaru Forester with a California license plate. Additional property inside J.W.'s vehicle included an estimated \$5,000.00 worth of camera equipment, two (2) laptop computers, and ski equipment mounted on the top of the vehicle. J.W. was able to make his way to a nearby store known as the Red Mesa store where he requested help. First responders arrived and J.W. was transported to a nearby medical facility for treatment.

Recovery of the Vehicle

22. Days later, J.W.'s Subaru Forester was discovered abandoned. A thorough search was conducted and the vehicle was processed. Items from inside and outside the vehicle were collected. Swabs from the vehicle were also taken. Laboratory analysis of the swabs and some of the items collected determined that there is DNA evidence (including male DNA) that is suitable for comparison.

Identification of Johnson

23. As the investigation continued, J.W. was able to provide investigators information from his financial institutions, one of which was Wells Fargo. Wells Fargo advised J.W. that someone had attempted to access his account via ATM the same day, May 16, in Shiprock, NM. Wells Fargo provided J.W. the times of three (3) cash withdrawal attempts at the ATM machine, all of which were unsuccessful. J.W. provided this information to investigators.

24. SA Carter successfully obtained video footage from the Wells Fargo location in Shiprock, NM. Footage obtained from the ATM was of high quality. SA Carter referenced

the known time frame in which the three (3) unsuccessful cash withdrawal attempts were made. SA Carter observed a Subaru vehicle pull into the parking lot of the bank and park near the ATM machine. The vehicle matched the overall description of that provided by J.W. Two males were occupying the front seats of the vehicle upon arrival to the bank. One of the males approached the ATM machine and began making attempts to use it. While using the machine, the camera on the ATM captured clear and detailed footage of the face of the male.

25. SA Carter sent this footage to Navajo Department of Criminal Investigations, Shiprock Division. Shiprock Criminal Investigators viewed the footage and immediately recognized the male at the ATM as Kendale Johnson. SA Carter then viewed an Arizona MVD photo from 2019 and concurred with the Shiprock Criminal Investigators that the male did appear to be Kendale Johnson.

Things to Be Searched and Seized from the Suspect

26. Your affiant respectfully requests that a search warrant be issued authorizing the search and seizure of a DNA sample to be obtained from Johnson in order to conduct a comparison with the DNA found during the examination of the cigarette butt from C.C.'s vehicle, as well as any DNA profiles present in the evidence and swabs from J.W.'s vehicle. The process of collection will be limited to the seizure of a DNA sample by the use of two (2) buccal swabs. The method of collection will be oral, that is, by inserting the buccal swabs into the mouth of Johnson for the purpose of collecting saliva and cheek cells.

Conclusion

27. Based on the foregoing, I respectfully submit that there is probable cause to believe that the evidence described above will assist investigators in confirming the identity of the perpetrator and further the investigation of, among other violations of federal law arising from this incident, violations of 18 U.S.C. §§1153 and 2111. Accordingly, your affiant requests a search warrant for a DNA sample from Johnson's person.

28. Assistant United States Attorney Kyle Nayback has reviewed and approved this affidavit in support of an application for a search warrant.

Pursuant to 28 U.S.C. § 1746(2), I declare that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Andrew Fulp", is written over a horizontal line.

Andrew Fulp
Special Agent
Federal Bureau of Investigation

Telephonically SUBSCRIBED and SWORN to before
me this 28th day of June, 2022.

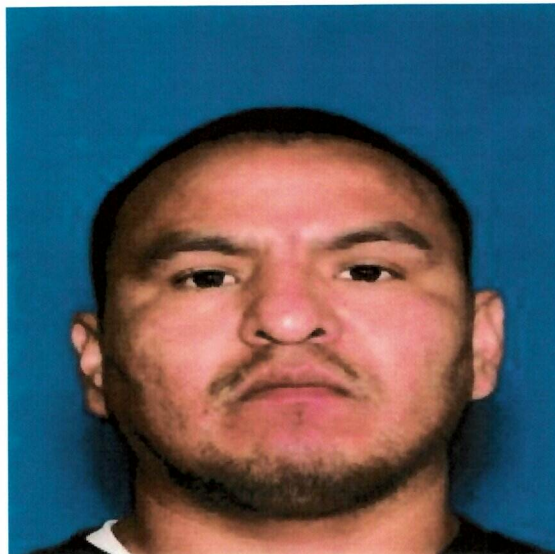
A handwritten signature in black ink, appearing to read "B. Paul Briones", is written over a horizontal line.

B. Paul Briones
United States Magistrate Judge

ATTACHMENT A

PERSON TO BE SEARCHED

Kendale Johnson, an Indian male, date of birth XX-XX-89, social security number XXX-XX-2890, approximately 5 foot 8 inches tall, and approximately 190 pounds. Photo below is a photo of Johnson dated October 8, 2019.



ATTACHMENT B

ITEMS TO BE SEIZED

Evidence in the form of deoxyribonucleic acid (DNA) to be obtained from Kendale Johnson through cotton/buccal swabs in the mouth. The process of collection will be limited to the seizure of DNA by using two (2) buccal swabs. The method of collection will be oral, that is, by inserting the buccal swabs into the mouth of Johnson for the purpose of collecting saliva and cheek cells.